

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON AGRICULTURE**

**Call to Order:** By **CHAIRMAN DONALD L. HEDGES**, on February 17, 2001 at 12:00 P.M., in Room 172 Capitol.

#### **ROLL CALL**

##### **Members Present:**

Rep. Donald L. Hedges, Chairman (R)  
Rep. Ralph Lenhart, Vice Chairman (D)  
Rep. Darrel Adams (R)  
Rep. Norma Bixby (D)  
Rep. Gilda Clancy (R)  
Rep. Rick Dale (R)  
Rep. Dave Gallik (D)  
Rep. Kathleen Galvin-Halcro (D)  
Rep. Christopher Harris (D)  
Rep. Verdell Jackson (R)  
Rep. Jim Keane (D)  
Rep. Larry Lehman (R)  
Rep. Holly Raser (D)  
Rep. Clarice Schrumpf (R)  
Rep. Frank Smith (D)  
Rep. Butch Waddill (R)  
Rep. Karl Waitschies (R)  
Rep. Merlin Wolery (R)

**Members Excused:** Rep. Linda Holden, Vice Chairman (R)

**Members Absent:** None.

**Staff Present:** Krista Lee Evans, Legislative Branch  
Robyn Lund, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

##### **Committee Business Summary:**

Hearing(s) & Date(s) Posted: HJ 33, 2/15/01; HB 601,  
2/15/01;  
Executive Action: HB 571, HB 495, HJ 33, HB 601,  
HB 418

**EXECUTIVE ACTION ON HB 571**

**Motion/Vote:** REP. GALVIN-HALCRO moved that HB 571 BE REMOVED FROM THE TABLE. Motion carried 17-1.

**Motion:** REP. GALVIN-HALCRO moved that AMENDMENTS TO HB 571 BE ADOPTED. Motion carried unanimously.

**Motion:** REP. GALVIN-HALCRO moved that HB 571 DO PASS AS AMENDED.

**Discussion:**

REP. HEDGES stated that the term "improved" should be defined as it relates to a pesticide facility that would be subject to department rules. He suggested that an improved facility be defined as a facility in which the cost of the improvement is 50% or more of the value of the facility.

REP. HARRIS suggested that the bill be amended to add the following definition: "For the purposes of this subsection, 'improved' means a structural change, the value of which is greater than 50% of the value of the building to be improved." He noted that this definition was in conceptual form and that staff could refine it to fit into the bill.

**Motion:** REP. HARRIS moved that AMENDMENT TO HB 571 BE ADOPTED. Motion carried 17-1, with Rep. Waddill voting no.

REP. HARRIS further moved that the bill be amended so that the rules apply only to government-owned or -operated facilities located in Class I counties in which there is a city with a population of 50,000 or more.

**Motion/Vote:** REP. HARRIS moved that AMENDMENT TO HB 571 BE ADOPTED. Motion carried 16-2 with Hedges and Lehman voting no.

**Motion/Vote:** REP. GALVIN-HALCRO moved that HB 571 DO PASS AS AMENDED. Motion carried 11-7 with Adams, Dale, Hedges, Jackson, Lehman, Schrumpf, and Wolery voting no.

**EXECUTIVE ACTION ON HB 495**

**Motion:** REP. KEANE moved HB 495.

**Motion:** REP. DALE moved AMENDMENTS TO HB 495.

**Discussion:**

**REP. HARRIS** asked about a revised fiscal note. **Rep. Olson** said that he would ask about a new fiscal note.

**REP. HEDGES** commented that the change in the amendment is that they have now dropped the word "coal."

**Motion/Vote:** **REP. DALE** moved that **AMENDMENTS TO HB 495 BE ADOPTED. Motion carried 17-1 with Gallik voting no.**

**REP. WAITSCHIES** moved **a conceptual amendment** that section 10 be added to this bill.

**REP. GALVIN-HALCRO** said that we are now looking at a bill that has sections 1, 2 and 3. Section 10 should become new section 4 in the amended bill.

**Motion/Vote:** **REP. WAITSCHIES** moved that **AMENDMENT TO HB 495 BE ADOPTED. Motion carried 17-1 with Gallik voting no.**

**Motion:** **REP. CLANCY** moved that **HB 495 DO PASS AS AMENDED.**

**Discussion:**

**REP. RASER** is afraid of the unintended consequences.

**REP. HARRIS** suggested that adding a sunset provision would limit the scope of this bill, reducing the unintended consequences.

**REP. LENHART** said that he will support this bill as amended.

**REP. LEHMAN** asked, if you put a sunset in, isn't there a five year window? **REP. HARRIS** thinks that it doesn't have a sunset provision.

**REP. JACKSON** thinks this bill is a good idea. If there is a mine out there that could be effectively reclaimed without endangering the environment and without creating other burdens, then he is for it. However, he thinks legislation has to be fair, so narrowing it down makes him very uncomfortable.

**REP. CLANCY** said that she is for the bill and against a sunset clause. These mines have already gone through the permitting stage. If someone can take over a mine and develop it into an industry that provides jobs for the families in Montana, she thinks we should proceed with this. This will help the whole state.

**REP. WOLERY** thought that HB 571 had a pretty narrow scope, didn't **REP. JACKSON** just vote for that?

**REP. BIXBY** wondered how old the permit would have to be. There is so much that can happen with the environment and that can impact the communities. She thinks that they should be required to get a permit. **REP. HEDGES** replied that they have to repermit every five years.

**REP. ADAMS** asked **REP. JACKSON** asked how narrow are we getting this. **REP. JACKSON** said that the object, as he heard, was to narrow it down so that it only applied for the one mine.

**REP. ADAMS** asked if there is only one coal mine in the state.

**REP. JACKSON** said that he would vote for it the way it is because it can be applied statewide without the sunset.

**REP. KEANE** doesn't think that they should add a sunset. Without the sunset, this has a significant impact to broaden the perspective of someone, who is investing money, to have a saleable commodity.

**REP. DALE** said that the law requires that reclamation start on mining property that has been inactive for two years. A permit revoked by the state expires in five years, so it can't be any longer than five years that this transfer can occur. The person applying for a transferred permit still has to supply all of the information required for a permit application and the DEQ will still review all the information. It appears that this is not a situation where the mine just sits waiting for someone to take it over.

**REP. RASER** asked if we need to clarify what substantial means.

**REP. DALE** said that there are currently definitions in mine reclamation law at every stage of reclamation as to what constitutes substantially completed.

**REP. WAITSCHIES** called for the question.

**Motion/Vote:** **REP. CLANCY** moved that **HB 495 DO PASS AS AMENDED**.  
**Motion carried 16-3 with Bixby, Gallik, and Raser voting no.**

### HEARING ON HJ 33

**Sponsor:** Representative Kim Gillan, HD 11

**Proponents:** Representative Don Steinbeisser, HD 100  
Representative Gary Forrester, HD 16  
Gloria Paladichuck, Richland Economic Development  
Ralph Peck, Department of Agriculture

**Opponents:** None

**Opening Statement by Sponsor:**

**Representative Kim Gillan, HD 11,** said that this bill indicates to sugar beet growers in Montana that we recognize their significant contribution to our economy and it directs the Montana Board of Investments and other agencies to utilize all possible resources and programs to assist the sugar beet industry in maintaining their position in our economy. Considering some of the economic stress, it is important to send this positive message to the sugar beet industry. This is a bipartisan initiative.

**Proponents' Testimony:**

**Representative Don Steinbeisser, HD 100,** said that the sugar beet industry is a very important industry in his area and the state of Montana. For the stability of the industry, the growers need to purchase these plants. We are here to let the state know what we want to do and that we will need some help down the road. It is important that the growers own the industry. Today 67% of the sugar beet industry is owned by growers.

**Representative Gary Forrester, HD 16,** said that it is important, in his standpoint, to send this message. There are a lot of people that work in the industry besides the growers. It is a very labor intensive process. The beet industry is in serious financial distress.

**Gloria Paladichuck, Richland Economic Development,** said that the sugar beet industry is a vital part of Richland County. It is a important part of eastern Montana's economy.

**Ralph Peck, Department of Agriculture,** stated that the sugar beet industry is a good community member for the whole Yellowstone valley. They are pleased to be able to work with many of the sugar beet growers to purchase a piece of the industry. We have two of the most efficient plants sitting in Montana. They are looking at the expansion of the acreage used for beet production because of the efficiency of those plants. They are optimistic that they can put a producer owned industry in place in Montana that will be able to compete in a national market.

**Questions from Committee Members and Responses:**

***{Tape : 1; Side : B; Approx. Time Counter : 9.1}***

**REPRESENTATIVE DAVE GALLIK** asked why the sugar industry is down right now. **Rep. Steinbeisser** said that growers of sugar beets grow other crops. NAFTA has increased our imports from Mexico. There is also a new product coming out of Canada, called stuffed molasses, that is bringing a great deal of sugar. The bottom fell out of the market causing some companies to go into bankruptcy.

**REPRESENTATIVE CHRISTOPHER HARRIS** asked if the refined sugar from sugar cane identical to the refined sugar from a sugar beet.

**Rep. Steinbeisser** said that it is.

**Closing by Sponsor:**

**Rep. Gillan** said that one of the best things we can do with Montana's money is to invest it in our own. It is important to send a positive signal to the sugar beet industry.

**EXECUTIVE ACTION ON HJ 33**

**Motion/Vote:** **REP. HARRIS** moved that **HJ 33 DO PASS. Motion carried unanimously.**

**HEARING ON HB 601**

**Sponsor:** **Representative Gary Forrester, HD 16**

**Proponents:** **None**

**Opponents:** **Michael Kakuk, Montana Contractors Association**

**Informational Witnesses:** **Steve Welch, DEQ**  
**Pam Langley, Montana Agro Business**

**Opening Statement by Sponsor:**

**Representative Gary Forrester, HD 16,** said that HB 601 was prompted by a request from a group of constituents living in a mobile home court that a gravel pit was near. In this instance an individual has chosen to use the 10,000 yards exemption granted under law. The people felt that they were ill served by the fact that they had no say in the process, even though the gravel pit is in close proximity to residents and a school. HB 601 is to remove the 10,000 yard exemption and it imposes a condition to address the public safety. Because of the change of the hearing time the proponents were unable to make it.

**Proponents' Testimony:** None.

**Opponents' Testimony:**

**Michael Kakuk, Montana Contractors Association,** is concerned about the impact on the ability of the DEQ to implement the act. Every hole on every piece of property is all of a sudden going to be a gravel mine. The contractors don't think that it will be possible for the DEQ to act efficiently. Regarding the section that covers threats to the public safety, they are concerned that the phrase "adequate traffic control measures" will expand the DEQ's authority. The last purpose of the current act is to provide for the general health and safety of the citizens.

**Informational Testimony:**

***{Tape : 1; Side : B; Approx. Time Counter : 23.3}***

**Steve Welch, DEQ,** said that they administer the open cut ground act, which is what this changes. There are currently about 2100 open cut mining operations. Each of those is covered by a separate reclamation plan. The bill, as written, seems to require that everyone who has a gravel pit on their property would then have to be covered by a reclamation permit and bond and all the application material that went with that. The program now has a staff of four, they would have to expand, but they don't know how much. The proposal to require assessment of threats to the public safety is administered by city, county or state. The only input they have is to identify the impacts of an operation.

**Pam Langley, Montana Agro Business,** said that concerns had been expressed by the grower groups.

**Questions from Committee Members and Responses:**

***{Tape : 1; Side : B; Approx. Time Counter : 27.7}***

**REPRESENTATIVE CHRISTOPHER HARRIS** asked for more information about the mine that the sponsor is concerned about.

**Rep. Forrester** said that the individual is using the 10,000 yard exemption right now. The problem is that the mobile home court has been developed and it is adjacent to school property. A road through the school parking lot, which had been abandoned, is one the operator of the gravel pit is wanting to use. He will not agree to any time restrictions. The people in the mobile home park want it to be restricted to non-school hours. They are currently engaged in litigation. There are more than 250

children that cross the access route to the school. **REP. HARRIS** asked for the distance between the mine and the school.

**Rep. Forrester** replied about 1/4 mile.

**REPRESENTATIVE RALPH LENHART** asked if there would be a fiscal note. **Rep. Forrester** said that there was no fiscal impact on this.

**REPRESENTATIVE DAVE GALLIK** said that one of the unintended consequences of this thing is that we may have to permit every fence post hole. Could we revise this to make it clear that there is an exemption for the little tiny things? **Rep. Forrester** said that this committee has the expertise to do just that.

**REPRESENTATIVE LARRY LEHMAN** asked the sponsor if he feels that the purpose of the legislature is to act on individual situations that could effect other permits. **Rep. Forrester** can point out several pieces of legislature that has benefitted individuals.

**REPRESENTATIVE JIM KEANE** asked, if he owned 100 acres, with a road in front of those acres, if he wanted to take 2000 yards of gravel off those acres and put it on the road, would he need a permit? **Rep. Forrester** replied that he would. **REP. KEANE** asked if he would need a permit if it were only 50 yards of gravel. **Rep. Forrester** said yes.

**REPRESENTATIVE RICK DALE** said that 10,000 cubic yards is 50 yards by 50 yards by 4 yards, so it isn't a very big spot.

**REP. HARRIS** said that it might be worthwhile to restrict the scope of this bill to reestablish the 10,000 yards exemption, but make the requirements of the permit applicable to any facility within a third of a mile of an operating school.

**REPRESENTATIVE GLIDA CLANCY** asked how the mine got the permit in the first place. **Rep. Forrester** said that there is no permit required under the 10,000 yards exemption.

**REPRESENTATIVE RALPH LENHART** asked if the sponsor would look at a possible amendment to exempt ranchers, farmers or home owners using gravel for personal use. **Rep. Forrester** said that would be acceptable.

**REPRESENTATIVE KARL WAITSCHIES** asked if the sponsor could say how big a hole you are talking about. **Rep. Forrester** said that you figure cubic yards by length times width times height.



**REP. WAITSCHIES** asked if he had a small hole, would he need to be bonded. **Mr. Welch** said that if he, as a land owner, were to mine over 10,000 yards then he would be required to be bonded.

**REP. LEHMAN** asked about traffic restriction in the instance being discussed. **Rep. Forrester** said that the school asked the county to abandon the road so they could build a new maintenance structure. The county said that you can't take away a person's easement, so the school attempted to grant the operator an easement on the outside of the property rather than through the school parking lot. The operator wanted the school to pay for paving and fencing of his access and it went downhill from there. **REP. LEHMAN** asked about enforcing the speed limit of 15 miles per hour near a school. **Rep. Forrester** said that in front of the school is 45 miles per hour because it is a state highway.

**REPRESENTATIVE VERDELL JACKSON** asked for clarification on the current law, as material is removed from this pit and exceeds 10,000 yards, would they then have to get a permit. **Mr. Welch** said that was correct, but there is also an intent clause that says if an operation will result in the removal of 10,000 yards. However, it is difficult to prove intent. **REP. JACKSON** clarified that when 10,000 yards has been removed the operator will have to get a permit or stop using that site. **Mr. Welch** said that is correct.

**REP. JACKSON** asked the sponsor to give some idea of how much has been removed from the pit in terms of truckloads. **Rep. Forrester** said that he doesn't have that information.

**REPRESENTATIVE DARREL ADAMS** asked how long the school and the pit had been there. **Rep. Forrester** said that the school started in 1951. The individual operating the gravel pit purchased the property 12 or 13 years ago. As the campus of the school grows the conflicts increase.

**REPRESENTATIVE FRANK SMITH** clarified that the trucks come by on the highway. **Rep. Forrester** said that the highway going pass the school is old highway 87 with a 45 mph speed limit. **REP. SMITH** asked if the county had petitioned for a slower speed limit. **Rep. Forrester** thinks that the county has to do a study on it, the Traffic Commission recommends to the county what they can do, but it is his understanding that it is 45 on a highway.

**Closing by Sponsor:**

**{Tape : 2; Side : A; Approx. Time Counter : 0}**

**Rep. Forrester** said that they can help these folks out. They don't have a lot of financial resources.

**EXECUTIVE ACTION ON HB 601**

**Motion:** **REP. SMITH** moved that **HB 601 DO PASS.**

**Discussion:**

**REP. HARRIS** put forth a conceptual amendment for DEQ to be able to impose conditions upon petition.

**Substitute Motion/Vote:** **REP. KEANE** made a substitute motion that **HB 601 BE TABLED. Substitute motion carried 11-7 with Adams, Bixby, Dale, Galvin-Halcro, Harris, Raser, and Waddill voting no.**

**EXECUTIVE ACTION ON HB 418**

**REP. HEDGES** explained the bill and the amendments. He had discussed the amendment with the sponsor and she said that it was fine.

**REP. WOLERY** said that he had visited wit the Stock Growers and they don't have any problem with this bill with or without the amendments.

**REP. GALLIK** said that he had also talked with the sponsor and he understood that she wanted to make sure that there were fences involved, but not to make someone who was not in the herd district share the cost.

**Motion:** **REP. GALLIK** moved **AMENDMENT TO HB 418.**

**REP. WAITSCHIES** asked for clarification of the present law.

**REP. HEDGES** said that you have to share the fences 50-50 or it is the responsibility of the livestock owner to do the fencing, providing he can fence it.

**REP. DALE** asked if this would be better or worse. **REP. HEDGES** said that it was better, but not much. **REP. DALE** asked if it would be within the title of the bill to make a conceptual amendment to fix the bill. **REP. HEDGES** said it was within the title.

**REP. SMITH** asked if the county would be responsible for a certain amount of this if they didn't want to go into the heard district.

**REP. HEDGES** said that the Highway Department would only be

involved if it was a primary or secondary road. **REP. SMITH** asked what we should do to make this a good bill. **REP. HEDGES** said that you would strike section 1 and say those people wishing to go into the herd district are responsible for building the fences.

**REP. ADAMS** called for the question.

**Motion/Vote:** **REP. GALLIK** moved that **AMENDMENT TO HB 418 BE ADOPTED. Motion carried unanimously.**

**THE CHAIR** stated that he would entertain a motion for the conceptual amendment for a new section 1 that those persons wishing to go into a herd district are required to build the necessary fences.

**Motion/Vote:** **REP. RASER** moved that **AMENDMENT TO HB 418 BE ADOPTED. Motion carried unanimously.**

**Motion/Vote:** **REP. JACKSON** moved that **HB 418 DO PASS AS AMENDED. Motion carried unanimously.**

**ADJOURNMENT**

Adjournment: 3:00 P.M.

---

REP. DONALD L. HEDGES, Chairman

---

ROBYN LUND, Secretary

DH/RL

**EXHIBIT** (agh40aad)